

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

WILLIAM ALLEN YOUNG,

Respondent,

v.

CHASITY L. PITTS,

Appellant.

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**DOCKET NUMBER WD71794**  
(Consolidated with WD72124)

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** February 15, 2011

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**APPEAL FROM**

The Circuit Court of Caldwell County, Missouri  
The Honorable Warren L. McElwain, Judge

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**APPELLATE JUDGES**

Division Two: James Edward Welsh, Presiding Judge, and Mark D. Pfeiffer and Karen King Mitchell, Judges

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**ATTORNEYS**

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Independence, MO

Attorney for Appellant.

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## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

WILLIAM ALLEN YOUNG, )  
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 Respondent, )  
 v. )  
 )  
 CHASITY L. PITTS, )  
 )  
 Appellant. )

WD71794 (Consolidated with WD72124)

Caldwell County

Before Division Two Judges: James Edward Welsh, Presiding Judge, and  
Mark D. Pfeiffer and Karen King Mitchell, Judges

Chasity Pitts (“Mother”) appeals the judgment of the Circuit Court of Caldwell County (“motion court”) modifying a prior judgment and parenting plan setting forth terms of custody of Mother’s daughter, R.Y. (“Daughter”). Mother claims that the motion court erred in denying her motion for disclosure of Department of Social Services (“DSS”) investigative records pertaining to alleged abuse of Daughter by Mother’s husband. Mother offers two reasons for her claim of error: (1) that the statute dealing with confidentiality and release of DSS records, section 210.150, is unconstitutional as it violates due process; and (2) that the motion court’s finding that the DSS’s refusal to release the records to Mother was based upon concern for a person’s life or safety was not supported by any evidence in the record. Mother also claims that the motion court abused its discretion in establishing a seven-and-one-half-hour time limitation on the presentation of her case at the motion hearing.

**AFFIRMED**; pending motion to transfer appeal to the Missouri Supreme Court **DENIED**.

### **Division Two holds:**

Mother’s constitutional challenge to section 210.150 is raised for the first time on appeal and is thus not preserved for review. Mother also fails to demonstrate that she suffered any prejudice by the motion court’s refusal to release the DSS investigative records to her. In this case, not only did the motion court grant Mother’s motion in limine to exclude the DSS investigative records, but the motion court’s amended judgment expressly bases its finding that a report of abuse of Daughter by Mother’s husband was “substantiated” not on the investigative

records that the court reviewed *in camera* at Mother's request, but on other evidence presented by the parties at various evidentiary hearings.

Finally, although time limitations upon the parties' presentation of evidence are not favored, the motion court in this case did not abuse its discretion in limiting the parties' presentation of evidence to seven and one-half hours each at the final hearing. Both parties were notified ahead of time about the limitations, and Mother fails to show how she was prejudiced by the time limitation.

**Opinion by: Karen King Mitchell, Judge**

February 15, 2011

**Dissenting opinion by Judge Mark D. Pfeiffer:**

The author dissents in that the majority opinion fails to correctly apply the standard of review to the only part of the motion court's judgment that matters – the section 452.375.6 findings in support of the motion court's custodial modification ruling.

In this case, the motion court identified the statutorily required change in circumstance so as to justify custodial modification as a finding of "substantiated" abuse by a third party not a party to the lawsuit (i.e. Children's Division) and relied upon a report detailing the investigation and conclusions of "substantiated" abuse by the Children's Division – a report that Mother could not respond to at trial because the motion court erroneously prevented her from seeing it.

The majority highlights the additional evidence that was before the motion court; however, that evidence did not prompt the motion court to independently determine that abuse had occurred (i.e. was "substantiated"). Had the motion court followed up its recitation of the lengthy evidence in this case with express findings relating to credibility and its conclusion that evidence apart from the Children's Division's investigative records justified a "finding" of "substantiated" abuse, I would have no complaint with the judgment. That is not, however, what the motion court did.

Instead, the motion court erroneously delegated its responsibility to a third party – the Children's Division. Then, because this third party "substantiated" allegations of abuse (at least at that juncture), the motion court concluded that it was unreasonable for Mother to refuse to believe those allegations and to take no steps to protect Daughter from this "alleged" abuse, an "allegation" later determined by the Children's Division to be "unsubstantiated."

Because the motion court relied upon the records of the investigation of the Children's Division in framing its statutory "findings" to justify custodial modification, and those records were not admitted into evidence, the motion court's judgment is not supported by substantial evidence. Alternatively, because the motion court erroneously delegated its fact-finding responsibility to a third party, whose investigation and resulting conclusions could not be challenged by Mother, the motion court erroneously applied the law. Under either scenario, I would reverse the trial court's judgment.

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.